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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/865,371	05/25/2001	Earl Walter Emerick	ROC920010109US1	3728

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IBM CORPORATION, INTELLECTUAL PROPERTY LAW
DEPT 917, BLDG. 006-1
3605 HIGHWAY 52 NORTH
ROCHESTER, MN 55901-7829

EXAMINER

LANEAU, RONALD

ART UNIT	PAPER NUMBER
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3714

MAIL DATE	DELIVERY MODE
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06/12/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/865,371

Applicant(s)

EMERICK ET AL.

Examiner

Ronald Laneau

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-26 is/are allowed.
- 6) ☒ Claim(s) 1,3-15,27-46 is/are rejected.
- 7) ☒ Claim(s) 2 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Response to Appeal Brief

1. In view of the Appeal Brief filed on February 05,2007, PROSECUTION IS HEREBY REOPENED. A non-final Office action is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3-15 and 27-46 are rejected under 35 U.S.C. 103(a) as being obvious over Bhat (US 5,668,995) in view of Henry et al (US 6,845,306 B2).

As per claims 1, 5, 8, 10, 15, 27, 30-32, 34, 37-39, 41, 43 and 46, Bhat discloses a method of operating a computerized system to provide computer recommendation information

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for a plurality of computers, including the steps of generating an operation profile for a computer using machine information specific to the computer and obtained from the computer (see abs.), wherein the operation profile indicates at least a usage trend for the computer and generating a recommendation of system resources for at least one computer system solution which satisfies at least the projected requirements (see claim 19, paragraph d). Bhat further discloses the steps of generating the operation profile, receiving the machine information from the computer via a network connection (see figs. 2A, 2B; all information is received within the network). Bhat discloses a system that can collect the system's performance at intervals shorter than the first timed intervals as claimed (see fig. 1); a system wherein the plurality of system options are provided by a plurality of third party solution providers (col. 5, lines 60-65), further include the steps of configuring the at least one computer system solution to indicate system specifications and a price (col. 6, lines 32-38). Bhat does not disclose a computer system solution based on the usage trend as claimed but Henry discloses determining projected requirements for at least one computer system solution based on the usage trend for the computer and obtained from the computer (col. 5, lines 44-65); further discloses future possible configurations for a computer system wherein a user of the system is allowed to make modifications to the configuration whether it's the specifications (col. 2, lines 37-40).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the system solution based on the usage trend as taught by Henry into the system of Bhat because it would provide such comprehensive control over operational states of a computer system.

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As per claims 3-4, 6-7, 13, 28-29 and 33, the system as taught by Bath is well capable of allowing a user to modify the recommendation base on the usage patterns of the network and also generating recommendation comprising processing system requirements specifications reflecting a desired future use of the computer (see fig. 1).

As per claims 9, 11-12, 14, 35-36, 40, 42, 44 and 45, Bhat discloses configuring the at least one computer solution to indicate specifications and price; receiving a purchase order for configured system; receiving a configuration selection from the user to modify the starting configuration; determining whether the configuration selection is valid; and if so, producing a configured system viewable by the user (col. 1 lines 52 to col. 2, line 10).

Allowable Subject Matter

4. Claim 2 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

None of the references, either singularly or in combination, discloses the following:

As per claim 2, a method further comprising, prior to generating the operation profile, receiving, at first timed intervals, the machine performance information from the computer via a network connection, wherein the machine performance information is collected at second timed intervals, shorter than the first timed intervals, by the computer.

5. Claims 16-26 are allowed.

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None of the references, either singularly or in combination, discloses the totality of combined elements as follows:

As per claims 16-26, a method of operating a computerized system to provide computer recommendation information for a plurality of computers, comprising: receiving system requirements specifications reflecting workload requirements for the respective computer and obtained from the respective computer not accounted for in the machine performance information; determining projected computer system requirements based on the history profile, the usage trend of the plurality of computers and the received system requirements specifications for the computer; and generating a recommendation of system resources, comprising at least one computer system solution, which satisfies the projected requirements.

Response to Arguments

6. Applicant's arguments with respect to claims 1-46 have been considered but are moot in view of the new ground(s) of rejection.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronald Laneau whose telephone number is (571) 272-6784. The examiner can normally be reached on 7:30 - 3:00.

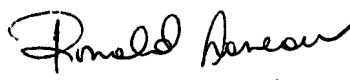
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ronald Laneau
Primary Examiner
Art Unit 3714

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RONALD LANEAU
PRIMARY EXAMINER

6/9/07